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Pursell, and Sobotta

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

WILLIAM M. SMITH,

Plaintiff,

v.

R. CONLY, E. PURSELL, LELAND  
BEAMER, MS. ASTORGA, CHRISTOPHER  
DIGIULIO, DR. DEWSNUP, MS. DAVIES,  
NINA SOBOTTA, and SEGEANT JOHN  
DOE I,

Defendants.

Case No. 2:20-CV-01091-YY

DEFENDANTS' ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S CIVIL COMPLAINT

JURY DEMAND

Defendants R. Conly, E. Pursell, Leland Beamer, Ms. Astorga, Christopher DiGiulio, Dr.  
Dewsnup, Ms. Davies, and Nina Sobotta (hereinafter “State Defendants”, “Answering  
Defendants”, or “Defendants”), by and through undersigned counsel, in response to plaintiff’s  
Complaint, admit, deny, and allege as follows – and where any allegation is not expressly

admitted, Defendants' Answer should be construed as a denial for all purposes pending discovery.

1.

Defendants admit that Mr. Smith has at times relevant been a prisoner incarcerated at the Eastern Oregon Correctional Institution (EOCI).

2.

Defendants agree that the Court would have jurisdiction over civil rights claim(s) brought under 42 USC 1983, and that Venue is proper in the Pendleton Division. Defendants reserve all rights and defenses to statute of limitations, whether a claim is properly stated, and all other defenses, pending discovery.

3.

Defendants agree that the Court would have jurisdiction over civil rights claim(s) brought under 42 USC 1983, and that Venue is proper in the Pendleton Division. Defendants reserve all rights and defenses to statute of limitations, whether a claim is properly stated, and all other defenses, pending discovery.

4.

Defendants admit that the Answering Defendants were acting within the course and scope of their duties as employees or agents of the Oregon Department of Corrections ("ODOC") at times relevant to the allegations.

5.

Regarding the remaining allegations, Defendants are presently without sufficient information or access to records to inform their answer further and, accordingly, deny the allegations pending discovery.

6.

With respect to Plaintiff's Prayer, Defendants admit that attorney's fees are, under certain circumstances, available to a prevailing plaintiff for claims brought under 42 USC 1983 by virtue

of the Prison Litigation Reform Act, but denies that such award is appropriate in this case. Defendants deny liability and, accordingly, deny that Plaintiff should recover damages in any category, nor fees or costs of litigation; nor is there a basis for equitable or injunctive relief.

### **JURY DEMAND**

7.

Defendants invoke their right to trial by jury for all claims and issues so triable.

### **FIRST AFFIRMATIVE DEFENSE Discretionary Immunity**

8.

The plaintiff's claims for relief are based upon the defendant's alleged performance of/or failure to exercise or perform its discretionary functions or duties pursuant to ORS 30.265(6)(c), for which immunity is conferred.

### **SECOND AFFIRMATIVE DEFENSE Qualified Immunity**

9.

At all times relevant to plaintiff's complaint, defendants reasonably believed that their conduct was lawful in light of clearly established law and the information available to them; that they acted consistent with the laws of the United States and the State of Oregon; and that their actions did not violate any clearly established statutory or constitutional rights of which a reasonable official would have knowledge.

**THIRD AFFIRMATIVE DEFENSE**  
**Tort Claim Liability Limit**

10.

Plaintiff is barred from seeking damages in excess of those provided by ORS 30.271.

**FOURTH AFFIRMATIVE DEFENSE**  
**Apparent Authority Immunity**

11.

The State Defendants' acts were done or omitted under apparent authority of laws, resolutions, rules, or regulations, and were not done or omitted with bad faith or malice.

12.

The State Defendant may be immune from liability from Plaintiff's state law claims pursuant ORS 30.265(6)(f).

**FIFTH AFFIRMATIVE DEFENSE**  
**Supervening Act of Third Party & Failure to Join Necessary Party**

13.

The allegations in the Complaint appear to allege that outside parties or equipment manufacturers may be responsible for acts, omissions and/or injuries to Plaintiff (if any). Accordingly, Defendants reserve the right to move at any time to dismiss one or more allegations, claims or the Complaint for failure to join a necessary party. Moreover, to the extent that said party's acts or omissions amount to the proximate cause or supervening cause of any breach or injury to Plaintiff, Defendants raise contributory and comparative fault to said extent, up to and including severing this answering defendant's liability or susceptibility to damages altogether.

**RESERVATION OF ADDITIONAL DEFENSES**

14.

Defendants reserve the right to assert additional defenses and/or to file a dispositive motion upon receipt of information or evidence supporting the same, and as may become known to them through investigation and discovery.

**WHEREFORE**, defendant prays for judgment herein denying plaintiff relief and granting defendant its costs and disbursements incurred in the defense of this action.

DATED August 19, 2021.

Respectfully submitted,

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